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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91171281
Party	Plaintiff PomWonderful LLC
Correspondence Address	DANIELLE M CRIONA ROLL LAW FIRM PC 11444 WEST OLYMPIC BOULEVARD LOS ANGELES, CA 90064 UNITED STATES dcriona@roll.com, sweiner@roll.com, mrivera@roll.com, tackerman@roll.com
Submission	Other Motions/Papers
Filer's Name	Danielle M. Criona
Filer's e-mail	dcriona@roll.com, takerman@roll.com, mrivera@roll.com
Signature	/s/ Danielle M. Criona
Date	09/21/2012
Attachments	Decl. of D. Criona with Exhibits Pt. 2_Part1.pdf (43 pages)(582864 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

POMWONDERFUL LLC)	
)	
Opposer,)	Opposition No.: 91171281
)	
v.)	
)	DECLARATION OF DANIELLE M.
JARROW FORMULAS, INC.,)	CRIONA IN SUPPORT OF OPPOSER’S
)	MOTION REQUESTING ENTRY OF
Applicant.)	OPPOSER’S <i>PROPOSED</i> PROTECTIVE
)	ORDER
)	
)	
)	
)	

DECLARATION OF DANIELLE M. CRIONA

I, Danielle M. Criona, declare as follows:

1. I am an attorney duly licensed to practice law before all courts of the State of California and am Counsel with the law firm of Roll Law Group P.C., attorneys of record herein for Opposer POMWonderful LLC (“POM”). I make this declaration in support of POM’s *Proposed* Protective Order. I have personal knowledge of the facts set forth in this declaration and if called as a witness, could and would testify competently to them.
2. At the start of this action, POM engaged the law firm of Loeb & Loeb as its counsel.
3. In 2009, POM’s then in-house counsel at Roll International took over representation of this case.
4. On January 1, 2010, Roll Law Group, P.C. took over representation of POM.

5. Roll Law Group P.C. is a law firm that, (i) is independently owned and managed from companies such as POM which are owned by Roll Global LLC, (ii) primarily services as clients, companies owned by Roll Global LLC, but also services other third party companies not owned by Roll Global LLC and individual clients, and (iii) is fully licensed by the California State Bar as a law firm.

6. An initial draft if the Order was circulated at the start of this action and the last circulated draft occurred in August 2009, drafted by Loeb & Loeb, prior to re-opening of the proceedings in August 2012.

7. Since the proceedings have reopened, POM's counsel has tried to finalize the protective order in this case but counsel for Jarrow has been more than disinterested in timely resolving any disputes regarding the Order.

8. Notably, Ms. Akerman, counsel for POM, and I have been forced to repeatedly request revisions or discussions of any outstanding matters and Jarrow's counsel has forced continued extensions of the issues, even forcing a further extension for the filing of the order.

9. On August 28, 2012, after the proceedings in this action resumed, Ms. Akerman circulated a revised version of the [*proposed*] protective order which the parties agreed would be filed with the Board on September 17, 2012. Attached hereto as Exhibit "1" is a true and correct copy of Ms. Akerman's e-mail to Jarrow's counsel.

10. On September 4, 2012, after counsel for Jarrow did not respond to POM's Proposed Order, Ms. Akerman emailed counsel for Jarrow and reminded them of the upcoming deadline to file the Order on September 17, 2012. Attached hereto as Exhibit "2" is a true and correct copy of Ms. Akerman's e-mail to Jarrow's counsel.

11. On September 12, 2012, without having sent POM's counsel a revised draft or comments on POM's Proposed draft Order, Mr. David Ewen, counsel for Jarrow, asked me whether Roll Law Group was "outside counsel". I immediately responded by e-mail in detail that it was and added, "attorneys are always on their honor not to share highly confidential

AEO information with their clients. Just because you are officially outside counsel to Jarrow, I have to trust that you will not share AEO information with Jarrow.” Attached hereto as Exhibit “3” is a true and correct copy of my email to Mr. Ewen.

12. On September 13, 2012, Mr. Ewen e-mail me again to inquire into Roll Law Group’s ownership structure and I immediately responded to the inquiry that Roll Law Group is an independent law firm. Attached hereto as Exhibit “4” is a true and correct copy of my e-mail to Mr. Ewen.

13. On September 14, 2012, I called Mr. Ewen and again requested Jarrow’s comments to POM’s *Proposed* Order. Mr. Ewen promised to provide it later that day. Mr. Ewen did not deliver on his promise.

14. On September 17, 2012 at 2pmPST, on the day that the Order was due to be filed with the Board, Mr. Ewen called me and verbally described the changes Jarrow sought to the draft Order. Mr. Ewen stated that Jarrow was only trying to prevent the disclosure of confidential information to counsel who would then use Jarrow’s information for strategic business purposes. Mr. Ewen’s position is that because the Roll Law Group is located in the same building as its clients, it should be held to a strict standard governing confidentiality. Since the changes were substantial and sought to exclude Roll Law Group from review of confidential information, the parties agreed to seek another extension to resolve the issues, but agreed that the parties would exchange drafts within twenty-four hours of receiving the other side’s draft.

15. On September 18, 2012 at 9amPST, I received a draft Order from Mr. Ewen and less than three hours later, Ms. Akerman included POM requested changes along with a detailed explanation of the changes resolving the very issues that Mr. Ewen protested against in the first draft. Attached hereto as Exhibit “5” is a true and correct copy of Mr. Ewen’s email to me as well as the documents attached to his email. Attached hereto as Exhibit “6” is a true and correct copy of Ms. Akerman’s e-mail to Mr. Ewen with POM’s revised documents.

16. Jarrow's counsel did not revise the draft within twenty-four hours as promised and on September 20, 2012, I emailed Jarrow's counsel requesting their revisions. Attached hereto as Exhibit "7" is a true and correct copy of my e-mail to Jarrow's counsel.

17. In the afternoon of September 20, 2012, Mr. Ewen called me and did not articulate any new reasons for which he could not accept POM's revised changes other than to say he was "uncomfortable" and insisted on adopting only the language he suggested in his first draft.

18. Jarrow has already stalled on drafts of the Order, delaying much needed discovery that is due on October 23, 2012.

19. POM's attorneys of record do not have ownership interest in POM nor do they hold any employment or any other position with POM.

20. In the morning of September 21, 2012, the date on which a protective order was due to be filed with the Board, when the parties still couldn't agree, I suggested to Mr. Ewen that the parties file a joint stipulation requesting the Board's intervention to select one of the competing versions of the Order. Mr. Ewen agreed.

21. Ms. Akerman and I spent more than five hours drafting POM's portion for the stipulation, and after finalizing the text for the motion, I sent the text to Mr. Ewen.

22. Late in the afternoon on September 21, 2012, after reviewing POM's version of the joint motion, Mr. Ewen called me to inform me that Jarrow refused to file a joint motion and would instead be filing a separate motion regarding the competing protective orders.

23. I relied on Mr. Ewen's good faith representation when I forwarded POM's insertion for a joint motion, along with all of POM's points and authorities.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 24th day of September, 2012, at Los Angeles, California.

Dated: September 24, 2012

By: /s/ Danielle M. Criona /s/

Danielle M. Criona
ROLL LAW GROUP P.C.
11444 West Olympic Blvd.
Los Angeles, California 90064
Tel. (310) 966-8771
Fax (310) 966-8810
Attorneys for Opposer

EXHIBIT 1

From: Akerman, Tammy
Sent: Tuesday, August 28, 2012 3:51 PM
To: 'Ewen, David'; Criona, Danielle
Cc: Giarratana, Mark
Subject: RE: PomWonderful/Jarrow Oppositions: redlined protective order
Attachments: Jarrow protective order (066710).DOC; compare jarrow (067025).DOC

David,

As promised, attached please find a revised protective order as well as a redline against the previous version. I noted that the original was drafted by Loeb and Loeb so most of the changes are refinements to language and definitions but please let me know if you disagree with any of the changes or have any additional comments. My main goal was to try to make it cleaner throughout.

Thanks,
Tammy

From: Ewen, David [mailto:DEwen@McCarter.com]
Sent: Thursday, August 23, 2012 3:55 PM
To: Criona, Danielle
Cc: Giarratana, Mark; Akerman, Tammy
Subject: RE: PomWonderful/Jarrow Oppositions

Danielle,

Attached is your service copy of the motion to extend, as filed with the Board.

Best,
David

From: Criona, Danielle [mailto:DCriona@Roll.com]
Sent: Thursday, August 23, 2012 5:37 PM
To: Ewen, David
Cc: Giarratana, Mark; Akerman, Tammy
Subject: RE: PomWonderful/Jarrow Oppositions

Thanks David. This is fine, you may insert my electronic signature and file it. Thank you for taking the lead on this.

Danielle M. Criona, Esq.
Roll Law Group PC
Intellectual Property Counsel

From: Ewen, David [mailto:DEwen@McCarter.com]
Sent: Thursday, August 23, 2012 2:28 PM
To: Criona, Danielle
Cc: Giarratana, Mark; Akerman, Tammy
Subject: RE: PomWonderful/Jarrow Oppositions

Danielle,

The attached contains our revisions to the draft you provided. Upon your confirmation, I will file the Motion with the Board.

Best,
David

From: Criona, Danielle [<mailto:DCriona@Roll.com>]
Sent: Thursday, August 23, 2012 2:35 PM
To: Ewen, David
Cc: Giarratana, Mark; Akerman, Tammy
Subject: RE: PomWonderful/Jarrow Oppositions

David,

Here are my edits. I don't think we need to explain in as much detail as you had and think we need to be mindful of the confidential nature of the settlement agreement. Let me know what you think of these – the changes are tracked.

Danielle M. Criona, Esq.
Roll Law Group PC
Intellectual Property Counsel

From: Ewen, David [<mailto:DEwen@McCarter.com>]
Sent: Thursday, August 23, 2012 9:16 AM
To: Criona, Danielle
Cc: Giarratana, Mark; Akerman, Tammy
Subject: RE: PomWonderful/Jarrow Oppositions

Danielle,

The draft Motion and Status Report is attached for your review. The yellow highlighted portions are proposed redactions. We look forward to your comments.

Best,
David

From: Ewen, David
Sent: Wednesday, August 22, 2012 5:50 PM
To: 'Criona, Danielle'
Cc: Giarratana, Mark; Akerman, Tammy
Subject: RE: PomWonderful/Jarrow Oppositions

Danielle,

My apologies for the delay. We've fallen a bit behind schedule due to a hectic week, but will get a draft to you tomorrow, in time for filing before Friday.

Best,
David

From: Criona, Danielle [<mailto:DCriona@Roll.com>]
Sent: Wednesday, August 22, 2012 5:14 PM
To: Ewen, David
Cc: Giarratana, Mark; Akerman, Tammy
Subject: RE: PomWonderful/Jarrow Oppositions
Importance: High

David,

Not to be a pest, but I also note that discovery officially closes on Friday, August 24th. I believe we should be filing our consent motion prior to this date. Can you please send us a draft by tomorrow?

Danielle M. Criona, Esq.
Roll Law Group PC
Intellectual Property Counsel

From: Ewen, David [<mailto:DEwen@McCarter.com>]
Sent: Friday, August 17, 2012 12:16 PM
To: Criona, Danielle
Cc: Giarratana, Mark; Akerman, Tammy
Subject: RE: PomWonderful/Jarrow Oppositions

Danielle,

We will get the draft to you by Monday, if not sooner.

David

**McCARTER
& ENGLISH**
ATTORNEYS AT LAW

David Ewen // Associate
McCARTER & ENGLISH, LLP

CityPlace I, 185 Asylum Street // Hartford, Connecticut 06103-3495
Direct: 860-275-6733
DEwen@mccarter.com // www.mccarter.com

BOSTON // HARTFORD // NEW YORK // NEWARK // PHILADELPHIA // STAMFORD // WILMINGTON

From: Criona, Danielle [<mailto:DCriona@Roll.com>]
Sent: Friday, August 17, 2012 3:11 PM
To: Ewen, David
Cc: Giarratana, Mark; Akerman, Tammy
Subject: RE: PomWonderful/Jarrow Oppositions

David,

I haven't seen your draft – are you sending it soon?

Danielle M. Criona, Esq.
Roll Law Group PC
Intellectual Property Counsel

From: Ewen, David [<mailto:DEwen@McCarter.com>]
Sent: Monday, August 13, 2012 12:45 PM
To: Criona, Danielle
Cc: Giarratana, Mark; Akerman, Tammy
Subject: RE: PomWonderful/Jarrow Oppositions

Danielle,

Yes, we confirm that the proposed schedule includes postponing the August 24th depositions. We will get back to you shortly with a draft.

As to settlement, we appreciate you explaining the rationale for PomWonderful's new position on settlement, but hope that the settlement dialogue will nevertheless remain open. Also, it seems that the parties' proposed settlement remains viable with respect to the "JFI Pome Marks" (which were not subject to the assignment/license-back provisions of the draft agreement) and that this aspect of the dispute can still be resolved. Please let us know your thoughts.

Best,
David

From: Criona, Danielle [<mailto:DCriona@Roll.com>]
Sent: Monday, August 13, 2012 3:32 PM
To: Ewen, David
Cc: Giarratana, Mark; Akerman, Tammy
Subject: RE: PomWonderful/Jarrow Oppositions

David,

Assuming by agreeing to this schedule both noticed depositions for August 24th will be postponed then we are fine with this schedule. Please confirm.

Thank you for taking the lead on drafting a status report and motion. I will look for the draft in the coming days.

Danielle M. Criona, Esq.
Roll Law Group PC
Intellectual Property Counsel

From: Ewen, David [<mailto:DEwen@McCarter.com>]
Sent: Wednesday, August 08, 2012 2:27 PM
To: Criona, Danielle
Cc: Giarratana, Mark
Subject: RE: PomWonderful/Jarrow Oppositions

Danielle,

Further to my email below, since the parties have devoted their time almost exclusively to the prospect of settlement, we do not believe either will be in a suitable position to depose the other's witness on August 24, 2012. We are amenable to jointly seeking an extension from the Board, and propose the following schedule:

- 9/17/12 Parties to file protective order with Board.
- 10/23/12 Parties to respond to outstanding discovery requests and produce documents.
- 11/22 - 12/22/12 Parties to make witnesses available for initial deposition (follow-up discovery may take place in following month)
- 12/22/12 Expert disclosures due
- 1/21/13 Discovery closes

Trial dates and the briefing schedule will follow as normal. Please let us have your comments on the above at your earliest convenience, and we will forward a draft Status Report and Motion to Extend for your review and input.

Regards,
David

From: Ewen, David
Sent: Wednesday, August 08, 2012 4:46 PM
To: 'DCriona@Roll.com'
Cc: Giarratana, Mark
Subject: PomWonderful/Jarrow Oppositions

Dear Danielle,

Please see the attached letter and enclosures regarding these oppositions.

Regards,
David

**McCARTER
& ENGLISH**
ATTORNEYS AT LAW

David Ewen //
Associate
McCARTER &
ENGLISH, LLP

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

POMWONDERFUL LLC Opposer, v. JARROW FORMULAS, INC. Applicant.	Consolidated Opposition No. 91171281 Marks: POMAMAZING (78/751,860) POMEGREAT (78/635,298) POMESYNERGY (78/727,050) POMGUARD (78/829,128) POMOPTIMIZER (78/829,152) POMEZOTIC (77/294,016)
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**STIPULATED PROTECTIVE ORDER REGARDING
CONFIDENTIALITY OF DISCOVERY MATERIAL**

Whereas, the parties to the above-captioned action (the “Action”), POMWonderful LLC and Jarrow Formulas, Inc. (each, a “Party” and together, the “Parties”), have stipulated that certain material and information exchanged by the Parties, or provided by or obtained from non-parties in this Action, be treated as confidential pursuant to the following terms of this Protective Order (the “Order”).

This Order does not affect the burden of proof that must be met by a Party seeking to protect confidential documents or information that is filed with the U.S. Patent and Trademark Office, Trademark Trial and Appeals Board (the “Board”) in the records in this Action. A Party seeking to protect information to be filed in the public records must prove that the documents or information meets the standards set forth in relevant authority. In meeting that burden, a Party may not rely on its own designation of material as “Confidential” or “Highly Confidential” under this Order.

Accordingly, it is this _____ day of _____, 2012, by the Board,
ORDERED:

1) Designation of Discovery Materials as Confidential or Highly Confidential. All documents, depositions, pleadings, exhibits and all other material or information subject to discovery in this Action, including but not limited to materials or information produced in the course of discovery, all answers to interrogatories, all answers to requests for admission, all responses to requests for production of documents, all deposition testimony and deposition exhibits, and all expert testimony and reports, as well as testimony adduced in this Action, exhibits, matters in evidence and any other material or information used or disclosed related to this Action, hereafter furnished, directly or indirectly, by or on behalf of any Party, person or witness in connection with this Action, shall be subject to this Order concerning confidential information, as set forth below:

a) “Confidential Information.” Information and materials shall be designated as confidential by placing or affixing the words “**CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER**” on the information and materials in a manner which will not interfere with its legibility. A Party that provides material and information may designate it as Confidential Information if such information or materials fall into one of the following categories (collectively, the “Categories”):

- i) confidential future business, marketing or sales plans, including specific business plans, strategies and projections, future marketing plans and strategies, future sales plans and strategies, forward-looking pricing strategies; the development of new product concepts, extensions of existing product lines, and other similar forward-looking information that is kept confidential by the Party;
- ii) specific financial information at a level of detail beyond that disclosed in sources available to the public;
- iii) results of research, studies or other complex analyses that the Parties

expended money to develop or obtain and that would be useful to current or potential competitors. This category includes, among other things, consumer research studies that the parties commissioned at considerable expense from third parties,

iv) complex market analyses provided by third parties under contracts with non-disclosure clauses, and analyses of other competitors in the market;

v) terms of contracts with the companies' suppliers or customers that could be used by current or potential competitors in their own negotiations with suppliers or customers;

vi) specific proprietary product formulas or proprietary manufacturing processes;

vii) product concepts in development that have not been launched into the market;

viii) private information about any officer, employee or other individual; or

ix) commercially sensitive information regarding the development, production, marketing, branding, sales or promotion of the Party's products or finances, the disclosure of which would have the effect of causing harm to the competitive position of the person or entity from which the information is obtained.

b) "Highly Confidential Information": Information and materials shall be designated as highly confidential by placing or affixing the words "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY – SUBJECT TO PROTECTIVE ORDER" on the information or materials, in a manner which will not interfere with their legibility. One who provides material may designate it as Highly Confidential

Information if such Party in good faith believes that such information falls within the Categories.

c) The designation of Confidential Information or Highly Confidential Information shall be made prior to, or contemporaneously with, the production or disclosure of such information and materials.

d) Portions of depositions of a Party's present and former officers, directors, employees, agents, experts, and representatives shall be deemed Confidential Information or Highly Confidential Information only if it is designated as such when the deposition is taken or within thirty (30) days after receipt of the final transcript by counsel for the deposed Party. Any testimony which describes material or information which has been designated as Confidential Information or Highly Confidential Information shall also be deemed to be designated as Confidential Information or Highly Confidential Information as the case may be. To ensure that the Parties have the full thirty (30) business days to make the appropriate designation, all deposition transcripts will be automatically treated as Highly Confidential Information for thirty (30) days after receipt of the final transcript by counsel for the deposed Party.

e) Where particular discovery material contains both Confidential Information, Highly Confidential Information, and non-confidential information, only the Confidential Information and Highly Confidential Information are subject to the limitations on disclosure as set forth in this Order.

f) Information or documents designated as Confidential Information or Highly Confidential Information under this Order shall not be used or disclosed by the Parties or counsel for the Parties or any persons identified in subparagraph (e) below for any

purposes whatsoever other than preparing for and conducting this Action (including appeals).

g) The Parties and counsel for the Parties shall not disclose or permit the disclosure of any materials or information designated as Confidential Information or Highly Confidential Information under this Order to any other person or entity, except that disclosures of Confidential Information may be made only in the circumstances set forth in Paragraphs (i) through (viii) below and disclosures of Highly Confidential Information may be made only in the circumstances set forth in Paragraphs (i) and (iii) through (viii) below:

i) Disclosure may be made to counsel and employees of counsel for the Parties (including in-house counsel or other legal department employees of a Party), including law clerks, analysts, paralegals, secretaries, translators and clerical staff, who are assisting with the preparation and trial of the Action. Any such employee to whom counsel for the Parties makes a disclosure shall be provided with a copy of, and become subject to, the provisions of this Order requiring that the documents and information be held in confidence.

ii) Disclosure may be made only to employees of a Party required in good faith to provide assistance in the conduct of the litigation in which the information was disclosed, and who execute the acknowledgement attached hereto at **Exhibit A** prior to receipt of any such material or information.

iii) Disclosure may be made to court reporters engaged for depositions and those persons, if any, specifically engaged for the limited purpose of making photocopies of documents, and any interpreter, court or other shorthand reporter

or typist translating, recording or transcribing testimony.

iv) Disclosure may be made to non-party consultants, investigators, or experts (hereinafter referred to collectively as “experts”) who are expressly retained by the Parties or counsel for the Parties to assist in the preparation and trial of the action, so long as any such expert is not a current or former employee of or consultant to either Party, or a current employee of or consultant to any of the disclosing Party’s competitors, and with disclosure only to the extent reasonably deemed necessary within disclosing counsel’s sole discretion for such expert to perform such work.

v) Disclosure may be made to the Board, as well as personnel of the Board and all appropriate courts of appellate jurisdiction.

vi) Disclosures may be made to service contractors (such as document copy services), jury consultants and graphic artists by any attorney or individual described in sub-paragraph (i) or (ii) above, to assist in the preparation of this Action, with disclosure only to the extent reasonably deemed necessary within disclosing counsel’s sole discretion to perform such work.

vii) Disclosures may be made to any person who authored and/or was an identified original recipient of the particular Confidential Information or Highly Confidential Information sought to be disclosed to that person, or any deponent when the examining attorney has a good faith basis to believe the deponent is aware of the particular Confidential Information or Highly Confidential Information sought to be disclosed.

viii) Disclosures may be made to any other person agreed-to by the producing

Party in writing.

h) Ten (10) days prior to the disclosure of any Confidential Information or Highly Confidential Information of the producing Party to persons described in paragraphs (iv) and (viii), above, the attorney for the receiving Party shall serve notice on the producing Party identifying the person(s) to receive such Confidential Information or Highly Confidential Information together with a fully executed copy of the acknowledgement attached hereto as **Exhibit B**, completed by such person. If the producing Party objects in writing to disclosure to such consultant, investigator, or expert within the ten (10) day period, no disclosure of material designated as Confidential Information or Highly Confidential Information may be made to the consultant, investigator, or expert. If the Parties cannot resolve the issue within five (5) days after such written objection is received by the non-objecting Party, the Party objecting to the proposed disclosure may thereupon seek, within ten (10) days of receipt of the written objection by the non-objecting Party, an appropriate order from the Board protecting against the proposed disclosure of Confidential Information or Highly Confidential Information to the consultant, investigator, or expert. Failure to seek an order from the Board within the time provided herein shall constitute a waiver of the objecting Party's objection. Until the Board rules on the matter, no disclosure of information or materials designated as Confidential Information or Highly Confidential Information shall be made to the consultant, investigator, or expert. Nothing herein shall give any Party the right to depose or obtain any discovery from any expert disclosed herein unless such expert is disclosed pursuant to Fed. R. Civ. P. 25(a)(2).

Notwithstanding the above, no Party shall be required to serve such notice if

disclosure would reveal the identity of an expert retained purely for consulting and non-testifying purposes and which would disclose the receiving Party's attorney work product, so long as any such expert is not (i) a current or former employee of or consultant to either Party, (ii) a current or former employee of or consultant to any of the disclosing Party's competitors, or (iii) a consultant to or employed in the field of dietary and nutritional supplements, and with disclosure only to the extent reasonably deemed necessary within disclosing counsel's sole discretion for such expert to perform such work. The Party who retained any such consulting and non-testifying expert that was not disclosed must provide a copy of the undertaking signed by such expert within thirty (30) days after settlement or conclusion of this proceeding, including all appeals.

i) Except as provided in subparagraph (e) above, counsel for the Parties shall keep all materials and information designated as Confidential Information and Highly Confidential Information which are received under this Order secure within their exclusive possession and shall exercise the same standard of due and proper care with respect to the storage, custody, use and/or dissemination of such information and materials as is exercised with respect to their own proprietary or highly sensitive information.

j) All copies, duplicates, extracts, summaries, or descriptions (hereinafter referred to collectively as "copies") of Confidential Information or Highly Confidential Information under this Order or any portion thereof, shall be immediately affixed with the words "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER," or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY – SUBJECT TO PROTECTIVE ORDER," to be consistent with the original, if those words do not already appear.

2) None of the provisions of this Order shall apply to the following categories of materials and information, and any Party may seek to remove the restrictions set forth herein on the ground that Confidential Information or Highly Confidential Information has/had been:

- a) available to the public at the time of its production hereunder;
- b) available to the public after the time of its production through no act, or failure to act, on behalf of the receiving Party, its counsel, representatives or experts;
- c) known to such receiving Party, or shown to have been independently developed by such receiving Party, prior to its production herein without use or benefit of the information;
- d) obtained outside of this action by such receiving Party from the producing Party without having been designated as Confidential Information or Highly Confidential Information; provided, however, that this provision does not negate any pre-existing obligation of confidentiality;
- e) obtained by such receiving Party after the time of disclosure hereunder from a third party having the right to disclose the same; or
- f) previously produced, disclosed, and/or provided by the producing Party to the receiving Party or any third party without an obligation of confidentiality.

3) Confidential or Highly Confidential Information Filed with the Board. To the extent that any materials or information subject to this Order (or any pleading, motion or memorandum referring to them) are proposed to be filed or are filed with the Board, those materials and information, or any portion thereof which discloses Confidential Information or Highly Confidential Information, shall be filed under seal (by the filing Party) with the Board in an envelope marked "SEALED PURSUANT TO ORDER OF BOARD DATED

_____”, together with an appropriate interim sealing motion and a statement substantially in the following form:

“This envelope, containing documents which are filed in this case by (name of party), is not to be opened or the contents thereof to be displayed or revealed except by Order of TTAB or consent of the parties to this action.”

Even if the filing Party believes that the materials or information subject to this Order are not properly classified as Confidential Information or Highly Confidential Information, the filing Party shall file an appropriate interim sealing motion; provided, however, that the filing of the interim sealing motion shall be wholly without prejudice to the filing Party’s rights under paragraph of this Confidentiality Order.

4) Party Seeking Greater Protection Must Obtain Further Order. No information or materials may be withheld from discovery on the ground that the material or information to be disclosed requires protection greater than that afforded by paragraph 1 of this Order unless the Party claiming a need for greater protection moves for an order providing such special protection pursuant to Fed. R. Civ. P. 26(c). This Order is without prejudice to the right of any Party to seek further or additional protection of information for which the protection of this Order is not believed by such Party to be adequate. Nothing in this Order shall be deemed to bar or preclude any producing Party from seeking such additional protection, including, without limitation, an order that certain information may not be discovered at all.

5) Challenging Designation of Confidentiality. A designation of confidentiality may be challenged upon motion. The burden of proving the confidentiality of designated information or material remains with the Party asserting such confidentiality. The process for making such an objection and for resolving the dispute shall be as follows:

a) The objecting Party shall notify the producing Party in writing as to its objection(s) to the designations. This notice shall include, at a minimum, a specific identification of the designated material objected to as well as the reason(s) for the objection.

b) The objecting Party shall thereafter have the burden of conferring with the producing Party claiming protection (as well as any other interested party) in a good faith effort to resolve the dispute.

c) Failing agreement, the objecting Party may bring a noticed motion to the Board for a ruling that the discovery material or information sought to be protected as Confidential Information or Highly Confidential Information is not entitled to such designation. The producing Party bears the burden to establish that such discovery material is Confidential Information or Highly Confidential Information and is entitled to such protection under this Order.

d) Notwithstanding any such challenge to Confidential Information or Highly Confidential Information, all such material and information so designated shall be treated as such and shall be subject to the provisions of this Order until one of the following occurs: (i) the Party that designated the Confidential Information or Highly Confidential Information withdraws such designation in writing; or (ii) the Board rules that the designation is not proper and that the designation be removed.

6) Errors in Designation. A producing Party that inadvertently fails to designate material or information pursuant to this Protective Order as Confidential Information or Highly Confidential Information at the time of the production shall make a correction promptly, but in no event more than fifteen (15) days, after first becoming aware of such error or as soon

thereafter as is commercially reasonable. Such correction and notice thereof shall be made in writing accompanied by substitute copies of each item, appropriately designated. Those individuals who reviewed the material or information prior to notice of the failure to designate by the producing Party shall, to the extent reasonably feasible, return to the producing Party or ensure destruction of all copies of such undesignated materials or information and shall honor the provisions of this Order with respect to the use and disclosure of any Confidential Information or Highly Confidential Information contained in the undesignated material or information from and after the date of designation. The Party receiving the information or material that the producing Party inadvertently failed to designate as Confidential Information or Highly Confidential Information shall not be in breach of this Order for any use made of such material or information prior to receiving notice of the inadvertent failure to designate.

7) Improper Disclosure. If information or material designated pursuant to this Order is disclosed to any person other than in the manner authorized by this Order, the Party responsible for this disclosure must immediately bring all pertinent facts relating to such disclosure to the attention of the designating Party or its counsel, without prejudice to other rights and remedies of the designating Party, and shall make every effort to prevent further improper disclosure and to ensure that no further or greater unauthorized disclosure and/or use thereof is made.

8) Inadvertent Production. Counsel shall make their best efforts to identify materials and information protected by the attorney-client privilege or the work product doctrine prior to the disclosure of any such materials or information. The inadvertent production of any material or information shall be without prejudice to any claim that such material is protected by the attorney-client privilege or protected from discovery as work product and no producing Party

shall be held to have waived any rights thereunder by inadvertent production. If a producing Party discovers that materials or information protected by the attorney-client privilege or work product doctrine have been inadvertently produced, counsel for the producing Party shall promptly give written notice to counsel for the receiving Party. The receiving Party shall take prompt steps to ensure that all known copies of such material and information are returned to the producing Party within five (5) business days of such request or as soon thereafter as is reasonable. Any notes or summaries, other than those expressly permitted under this section, referring to or relating to any such inadvertently produced information subject to a claim of immunity or privilege shall be destroyed. The receiving Party may afterwards contest such claims of privilege or work product as if the materials had not been produced, but shall not assert that a waiver occurred as a result of the production.

9) Return of Confidential Material at Conclusion of Litigation. At the conclusion of the Action, all Confidential Information or Highly Confidential Information under this Order and not received in evidence, and all copies thereof, shall be returned to the originating Party within ninety (90) calendar days. If the Parties so stipulate, the materials may be destroyed and certified destroyed instead of being returned. Counsel for the parties may only retain one copy of pleadings filed for archival purposes, but may not otherwise keep any other Confidential Information or Highly Confidential Information. The Board may return to counsel for the Parties, or destroy, any sealed material at the end of the Action, including any appeals.

10) Miscellaneous Provisions.

a) The entry of this Order shall not be construed as a waiver of any right to object to the furnishing of information or material in response to discovery and, except as expressly provided, shall not relieve either Party of the obligation of producing

information or material in the course of discovery.

b) If at any time Confidential Information or Highly Confidential Information is subpoenaed by any arbitral, administrative or legislative body, or the TTAB, the person to whom the subpoena or other request is directed shall immediately give written notice thereof to counsel of the Party that has produced such Confidential Information or Highly Confidential Information and shall provide the Party with an opportunity to object to the production of such Confidential Information or Highly Confidential Information. If the producing Party does not move for a protective order within ten (10) calendar days of the date written notice is given, the Party to whom the referenced subpoena is directed may produce, on or after the date set for production in the subpoena but not prior to the end of the ten (10) calendar day notice period, such material in response thereto.

c) Counsel of either Party shall have the right to exclude from depositions, other than the deponent and the reporter, any person who is not authorized under this Order to receive Confidential Information or Highly Confidential Information. Such right of exclusion shall be applicable only during periods of examination or testimony directed to Confidential Information or Highly Confidential Information, as applicable.

d) All notices required by any paragraph of this Order may be made by facsimile and/or email to counsel representing the noticed Party, however, notice in those manners is not effective without evidence of receipt of the facsimile and/or email by the noticed Party's counsel. The date by which a Party receiving notice shall respond or otherwise take action shall be computed from the date of receipt of the notice. Any of the notice requirements herein may be waived in whole or in part, but only in a writing signed by counsel for the producing Party.

- e) Nothing in this Order shall bar or otherwise restrict counsel from rendering advice to his or her client with respect to this Action and, in the course thereof, relying in a general way upon his or her examination of Highly Confidential Information produced or exchanged in this Action; provided, however, that in rendering such advice and in otherwise communicating with his or her client, counsel shall not disclose the contents of Highly Confidential Information produced by any non-party.
- f) Execution of this Order shall not constitute a waiver of the right of either Party to claim in this Action or otherwise that any documents, communications, or any portion thereof, are privileged or otherwise non-discoverable, or are not admissible in evidence in this Action or any other proceeding.
- g) All persons receiving Confidential Information or Highly Confidential Information are enjoined from producing them to any other persons, except in conformance with this Order. Each individual who receives Confidential Information or Highly Confidential Information agrees to subject himself/herself to the jurisdiction of this Board for the purpose of any proceedings relating to the performance under, compliance with or violation of this Order.
- h) The Parties agree that the terms of this Order shall survive and remain in effect after the termination of this Action. The Board shall retain jurisdiction to hear disputes arising out of this Order.
- i) A Party may move at any time to modify the terms of this Order. A Party seeking to modify this Order shall request only the minimum modification as is reasonably necessary to address the grounds upon which its motion to modify is based.
- j) Any headings used in this Order are for reference purpose only and are not to be

used to construe or limit the meaning of any provision.

k) This Order may be executed in any number of counterparts, all of which, upon completed execution thereof by the Parties, together shall be deemed to constitute one original.

SEEN AND AGREED:

Dated: August __, 2012

Dated: August __, 2012

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(860) 275-3397 (fax)

Attorneys for Jarrow Formulas, Inc.

SO ORDERED:

Judge

EXHIBIT A

WHEREAS, I, _____, am an employee of _____ and may have cause to examine Confidential Information or Highly Confidential Information pursuant to the foregoing Order. I have read and understand the provisions of the foregoing Order.

NOW, THEREFORE, I hereby consent to be bound by the provisions of the Order and to abide by all its terms with respect to materials and information deemed confidential in this proceeding.

Dated: _____

Name:

Address:

EXHIBIT B

[SEE NEXT PAGE]

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

POMWONDERFUL LLC

Opposer,

v.

JARROW FORMULAS, INC.

Applicant.

Consolidated Opposition No. 91171281

Marks: POMAMAZING (78/751,860)
POMEGREAT (78/635,298)
POMESYNERGY (78/727,050)
POMGUARD (78/829,128)
POMOPTIMIZER (78/829,152)
POMEZOTIC (77/294,016)

ACKNOWLEDGEMENT

I, _____, declare as follows:

1. My present employer is _____.
2. My business address is _____.
3. My occupation is _____.
4. In the past 12 months, I have consulted and/or served as an expert for the following companies (attach additional sheets if necessary): _____.
5. I have reviewed a copy of the Order in this Action, and I understand and agree to be bound by its terms and provisions.
6. I will hold in confidence, will not disclose to anyone not qualified or cleared under the Protective Order, and will use only for approved purposes in this litigation, any Confidential Information or Highly Confidential Information, as such terms are defined in the Order.
7. I will return all Confidential Information or Highly Confidential Information that come into my possession, and all materials or information which I prepare relating thereto, to counsel for the Party by whom I am employed or retained.

8. I hereby submit myself to the jurisdiction of the United States Patent and Trademark Office, Trademark Trial and Appeal Board for the purposes of enforcement of the Order in this Action.

9. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date: _____

Name:

Address:

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

POMWONDERFUL LLC

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**STIPULATED PROTECTIVE ORDER REGARDING
CONFIDENTIALITY OF DISCOVERY MATERIAL**

Whereas, the parties to the above-captioned action (the “Action,” ~~PomWonderful~~), POMWonderful LLC and Jarrow Formulas, Inc. (each, a “Party” and together, the “parties”~~Parties~~”), have stipulated that certain ~~discovery~~ material and information exchanged by the ~~parties~~ Parties, or provided by or obtained from non-parties in this ~~action~~ Action, be treated as confidential pursuant to the following terms of this Protective Order (the “Order”).

This Order does not affect the burden of proof that must be met by a Party seeking to protect confidential documents or information that is filed with the U.S. Patent and Trademark Office, Trademark Trial and Appeals Board (the “Board”) in the records in this Action. A Party seeking to protect information to be filed in the public records must prove that the documents or information meets the standards set forth in relevant authority. In meeting that burden, a Party may not rely on its own designation of material as “Confidential” or “Highly Confidential” under this Order.

Accordingly, it is this _____ day of _____, ~~2009~~2012, by the United States Patent and Trademark Office, Trademark Trial and Appeal Board (the “~~Board~~”)Board,

ORDERED:

{066711.1066710.1} 1

1) Designation of Discovery Materials as Confidential or Highly Confidential. All documents, depositions, pleadings, exhibits and all other material or information subject to discovery in this ~~action~~Action, including documents~~but not limited to materials or information~~ produced in the course of discovery, all answers to interrogatories, all answers to requests for admission, all responses to requests for production of documents, all deposition testimony and deposition exhibits, and all expert testimony and reports, as well as testimony adduced at ~~trial~~, ~~trial~~in this Action, exhibits, matters in evidence and any other material or information used or disclosed at ~~trial~~related to this Action, hereafter furnished, directly or indirectly, by or on behalf of any ~~party, non-party~~Party, person or witness in connection with this ~~action~~Action, shall be subject to this Order concerning confidential information, as set forth below:

a) "Confidential Information." ~~The designation of such Confidential Information shall be made~~Information and materials shall be designated as confidential by placing or affixing the words "**CONFIDENTIAL**," "**CONFIDENTIAL INFORMATION**," OR "**CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER**" on the ~~documents,~~information and materials in a manner which will not interfere with their legibility. ~~One who provides material may designate it as Confidential Information if such party in good faith believes that the disclosure of such information would result in an invasion of privacy, or if such party in good faith believes that such information constitutes its, proprietary information, confidential business or financial information, trade secrets, personal or financial affairs within the meaning of Fed. R. Civ. P. 26(c)(7).~~ The designation of Highly Confidential Information shall be made by placing or affixing the words "**HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY**" OR "**HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - SUBJECT TO PROTECTIVE**

~~ORDER" on the documents, in a manner which will not interfere with their legibility. One who provides material may designate it as Highly Confidential Information if such party in good faith believes that such information constitutes highly sensitive confidential business information or trade secrets of the producing party which, if disclosed to persons of expertise in the area, would reveal significant technical or business advantages of the producing or designating party, and which includes subject matter which is believed to be unknown to the other party or parties, or any of the employees of the corporate parties. Except for documents produced for inspection at the party's facilities, the designation of Confidential Information or Highly Confidential Information shall be made prior to, or contemporaneously with, the production or disclosure of that information. In the event that documents are produced for inspection at the party's facilities under Fed. R. Civ. P. 34, prior to or at any time up to thirty (30) days after the inspection, the party permitting the inspection may identify in writing the Confidential Information or Highly Confidential Information contained in such inspected discovery material that will be or that was disclosed in the inspection and such discovery material will be marked with the appropriate legend of "CONFIDENTIAL," "CONFIDENTIAL INFORMATION;" "CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER;" "HIGHLY CONFIDENTIAL ATTORNEYS' EYES ONLY" OR "HIGHLY CONFIDENTIAL ATTORNEYS' EYES ONLY SUBJECT TO PROTECTIVE ORDER." To ensure that the producing party has the full thirty (30) days to make the appropriate designation, all information gleaned from inspection of things and premises will be automatically treated as Highly Confidential Information for thirty (30) days after the day of inspection. There will be no waiver of confidentiality by the inspection of documents containing~~

~~Confidential Information or Highly Confidential Information before such documents are copied and marked in accordance with the requirements of this Order.~~its legibility. A Party that provides material and information may designate it as Confidential Information if such information or materials fall into one of the following categories (collectively, the “Categories”):

- i) confidential future business, marketing or sales plans, including specific business plans, strategies and projections, future marketing plans and strategies, future sales plans and strategies, forward-looking pricing strategies; the development of new product concepts, extensions of existing product lines, and other similar forward-looking information that is kept confidential by the Party;
- ii) specific financial information at a level of detail beyond that disclosed in sources available to the public;
- iii) results of research, studies or other complex analyses that the Parties expended money to develop or obtain and that would be useful to current or potential competitors. This category includes, among other things, consumer research studies that the parties commissioned at considerable expense from third parties.
- iv) complex market analyses provided by third parties under contracts with non-disclosure clauses, and analyses of other competitors in the market;
- v) terms of contracts with the companies’ suppliers or customers that could be used by current or potential competitors in their own negotiations with suppliers or customers;
- vi) specific proprietary product formulas or proprietary manufacturing processes;
- vii) product concepts in development that have not been launched into the

market;

viii) private information about any officer, employee or other individual; or

ix) commercially sensitive information regarding the development, production, marketing, branding, sales or promotion of the Party's products or finances, the disclosure of which would have the effect of causing harm to the competitive position of the person or entity from which the information is obtained.

b) "Highly Confidential Information": Information and materials shall be designated as highly confidential by placing or affixing the words "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY – SUBJECT TO PROTECTIVE ORDER" on the information or materials, in a manner which will not interfere with their legibility. One who provides material may designate it as Highly Confidential Information if such Party in good faith believes that such information falls within the Categories.

c) The designation of Confidential Information or Highly Confidential Information shall be made prior to, or contemporaneously with, the production or disclosure of such information and materials.

d) ~~b)~~ Portions of depositions of a ~~party~~ Party's present and former officers, directors, employees, agents, experts, and representatives shall be deemed ~~CONFIDENTIAL or HIGHLY CONFIDENTIAL~~ only if they are Confidential Information or Highly Confidential Information only if it is designated as such when the deposition is taken or within thirty (30) days after receipt of the final transcript by counsel for the deposed ~~party~~ Party. Any testimony which describes a ~~document~~ material or information which has

been designated as ~~CONFIDENTIAL~~ or ~~HIGHLY CONFIDENTIAL~~ Confidential Information or Highly Confidential Information shall also be deemed to be designated as ~~CONFIDENTIAL~~ or ~~HIGHLY CONFIDENTIAL~~ Confidential Information or Highly Confidential Information as the case may be. To ensure that the parties Parties have the full thirty (30) business days to make the appropriate designation, all deposition transcripts will be automatically treated as Highly Confidential Information for thirty (30) days after receipt of the final transcript by counsel for the deposed party Party.

e) ~~e)~~ Where particular discovery material contains both Confidential Information, Highly Confidential Information, and non-confidential information, only the Confidential Information and Highly Confidential Information are subject to the limitations on disclosure as set forth in this Order.

f) ~~d)~~ Information or documents designated as ~~CONFIDENTIAL~~ or ~~HIGHLY CONFIDENTIAL~~ Confidential Information or Highly Confidential Information under this Order shall not be used or disclosed by the parties Parties or counsel for the parties Parties or any persons identified in subparagraph (e) below for any purposes whatsoever other than preparing for and conducting this action Action (including appeals).

g) ~~e)~~ The parties Parties and counsel for the parties Parties shall not disclose or permit the disclosure of any documents materials or information designated as ~~CONFIDENTIAL~~ or ~~HIGHLY CONFIDENTIAL~~ Confidential Information or Highly Confidential Information under this Order to any other person or entity, except that disclosures of ~~CONFIDENTIAL INFORMATION~~ Confidential Information may be made only in the circumstances set forth in Paragraphs (i) through (viii) below and disclosures of ~~HIGHLY CONFIDENTIAL INFORMATION~~ Highly Confidential Information may be made only

in the circumstances set forth in Paragraphs (i) and (iii) through (viii) below:

- i) Disclosure may be made to counsel and employees of counsel for the ~~parties~~ ~~(but not~~ Parties ~~(including~~ in-house counsel or other legal department employees of a ~~party~~ Party), including law clerks, analysts, paralegals, secretaries, translators and clerical staff, who are assisting with the preparation and trial of the ~~action~~ Action. Any such employee to whom counsel for the ~~parties~~ Parties makes a disclosure shall be provided with a copy of, and become subject to, the provisions of this Order requiring that the documents and information be held in confidence.
- ii) Disclosure may be made only to employees of a ~~party~~ Party required in good faith to provide assistance in the conduct of the litigation in which the information was disclosed, and who execute the acknowledgement attached hereto at **Exhibit A** prior to receipt of any such ~~documents~~ material or information.
- iii) Disclosure may be made to court reporters engaged for depositions and those persons, if any, specifically engaged for the limited purpose of making photocopies of documents, and any interpreter, court or other shorthand reporter or typist translating, recording or transcribing testimony.
- iv) Disclosure may be made to non-party consultants, investigators, or experts (hereinafter referred to collectively as "experts") who are expressly retained by the ~~parties~~ Parties or counsel for the ~~parties~~ Parties to assist in the preparation and trial of the action, so long as any such expert is not a current or former employee of or consultant to either ~~party~~ Party, or a current employee of or consultant to any of the disclosing ~~party~~ Party's competitors, and with disclosure only to the extent

reasonably deemed necessary within disclosing counsel's sole discretion for such expert to perform such work.

v) Disclosure may be made to the ~~TTAB~~Board, as well as personnel of such ~~TTAB~~the Board and all appropriate courts of appellate jurisdiction.

vi) Disclosures may be made to service contractors (such as document copy services), jury consultants and graphic artists by any attorney or individual described in sub-paragraph (i) or (ii) above, to assist in the preparation of this ~~action~~Action, with disclosure only to the extent reasonably deemed necessary within disclosing counsel's sole discretion to perform such work.

vii) Disclosures may be made to any person who authored and/or was an identified original recipient of the particular Confidential Information or Highly Confidential Information sought to be disclosed to that person, or any deponent when the examining attorney has a good faith basis to believe the deponent is aware of the particular Confidential Information or Highly Confidential Information sought to be disclosed.

viii) Disclosures may be made to any other person agreed-to by the producing ~~party~~Party in writing.

h) ~~h)~~ Ten (10) days prior to the disclosure of any Confidential Information or Highly Confidential Information of the producing ~~party~~Party to persons described in paragraphs (iv) and (viii), above, the attorney for the receiving ~~party~~Party shall serve notice on the producing ~~party~~Party identifying the person(s) to receive such Confidential Information or Highly Confidential Information together with a fully executed copy of the acknowledgement attached hereto as **Exhibit B**, completed by such person. If the

producing ~~party~~Party objects in writing to disclosure to such consultant, investigator, or expert within the ten (10) day period, no disclosure of material designated as ~~CONFIDENTIAL or HIGHLY CONFIDENTIAL~~Confidential Information or Highly Confidential Information may be made to the consultant, investigator, or expert. If the ~~parties~~Parties cannot resolve the issue within five (5) days after such written objection is received by the non-objecting ~~party~~Party, the ~~party~~Party objecting to the proposed disclosure may thereupon seek, within ten (10) days of receipt of the written objection by the non-objecting ~~party~~Party, an appropriate order from the Board protecting against the proposed disclosure of ~~CONFIDENTIAL or HIGHLY CONFIDENTIAL~~Confidential Information or Highly Confidential Information to the consultant, investigator, or expert. Failure to seek an order from the Board within the time provided herein shall constitute a waiver of the objecting ~~party~~Party's objection. Until the Board rules on the matter, no disclosure of ~~material~~information or materials designated as ~~CONFIDENTIAL or HIGHLY CONFIDENTIAL~~Confidential Information or Highly Confidential Information shall be made to the consultant, investigator, or expert. Nothing herein shall give any ~~party~~Party the right to depose or obtain any discovery from any expert disclosed herein unless such expert is disclosed pursuant to Fed. R. Civ. P. 25(a)(2).

Notwithstanding the above, no ~~party~~Party shall be required to serve such notice if disclosure would reveal the identity of an expert retained purely for consulting and non-testifying purposes and which would disclose the receiving ~~party~~Party's attorney work product, so long as any such expert is not (i) a current or former employee of or consultant to either ~~party~~Party, (ii) a current or former employee of or consultant to any of the disclosing ~~party~~Party's competitors, or (iii) a consultant to or employed in the field

of dietary and nutritional supplements, and with disclosure only to the extent reasonably deemed necessary within disclosing counsel's sole discretion for such expert to perform such work. The ~~party~~Party who retained any such consulting and non-testifying expert that was not disclosed must provide a copy of the undertaking signed by such expert within thirty (30) days after settlement or conclusion of this proceeding, including all appeals.

i) ~~g)~~ Except as provided in subparagraph (e) above, counsel for the ~~parties~~Parties shall keep all ~~documents~~materials and information designated as ~~CONFIDENTIAL~~ or ~~HIGHLY CONFIDENTIAL~~Confidential Information and Highly Confidential Information which are received under this Order secure within their exclusive possession and shall exercise the same standard of due and proper care with respect to the storage, custody, use and/or dissemination of such information and materials as is exercised with respect to their own proprietary or highly sensitive information.

j) ~~h)~~ All copies, duplicates, extracts, summaries, or descriptions (hereinafter referred to collectively as "copies") of ~~documents or information designated as Confidential Information or Highly Confidential Information under this Order or any portion thereof,~~ shall be immediately affixed with the words "CONFIDENTIAL," "CONFIDENTIAL INFORMATION," "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER," "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY – SUBJECT TO PROTECTIVE ORDER," to be consistent with the original, if those words do not already appear.

2) None of the provisions of this Order shall apply to the following categories of ~~documents~~materials and information, and any ~~party~~Party may seek to remove the restrictions set